(1967) 04 CAL CK 0020

Calcutta High Court

Case No: None

The Standard Literature Company Private Limited and Others	APPELLANT
Vs	
Union of India	RESPONDENT

Date of Decision: April 6, 1967

Acts Referred:

- Constitution of India, 1950 - Article 13, 14, 19, 19(1)(a), 19(1)(f)

Citation: 71 CWN 719

Hon'ble Judges: D.N. Sinha, C.J; S.K. Mukherjea, J; Arun K. Mukherjea, J

Bench: Full Bench

Advocate: S. Banerjee, A.G., Prasun Chandra Ghosh, Salil Kumar Dutt and Ramendra Nath Chakrabarty, for the Appellant;A.C. Mitter and Amiya Kr. Mukherjee, for the Respondent

Final Decision: Dismissed

Judgement

D.N. Sinha, C.J.

This matter and a number of other matters, namely - C.R. 472(W) of 1962, C.R. 807(W) to 819(W) of 1963, C.R. 939(W) of 1963, C.R. 189(W) to 194(W) of 1964, C.R. 207(W) and 208(W) of 1964, C.R. 331(W) of 1964, C.R. 610(W) of 1964, C.R. 1121(W) of 1964, C.R. 1213(W) of 1964, and C.R. 994(W) of 1964, have been referred to this Special Bench for disposal, as all of them involve a mater of great public importance, namely, the vires of the public premises (Eviction of Unauthorized Occupants) Act, 1958 (Central Act 32 of 1958), (hereinafter referred to as the "said Act"). There has been a common argument in all these cases and the point of law being the same, they will all the governed by the decision herein. Distinctive features of each case will be considered separately. The facts in this case are briefly as follows: The Petitioner No. 1, Standard Literature Company Private Limited (hereinafter referred to as the "company") is a company incorporated under the Indian Companies Act and the Petitioners Nos. 2 and 3 are directors and shareholders thereof. Prior to

September 19, 1963 and commencing from the year 1915, this Company was a tenant in respect of rooms Nos. 22, 24, 27, 28 in the ground floor and Nos. 46, 52, 56, 57, 58, 60, 64, 65, 66, 66/1 and 67 on first floor, half of Nos. 47 and 55, together with the use of the common staircase, in premises Nos. 13, 13/1, 13/2, and 13/3 Old Court House Street and Nos. 1, 2 and 2/1 Mangoe Lane, in Calcutta, under the previous owner, the Hercules Trading Corporation Private Limited. On or about the 19th of September, 1963 the demised premises were purchased by the Union of India (the Respondent No. 1) and the company became a tenant under the said Respondent on the same terms and conditions as before. On or about the 31st of March 1964 the company received a notice to quit, stated to have been issued on behalf of the President of India, calling upon them to quit and vacate the said premises on the expiry of the month of April 1964. A copy of the said notice is annexed to the petition and marked with the letter ''A''. On the 20th April 1964 the company through one of its directors, objected to comply with the said notice. A copy of the said letter of objection is annexure ''B'' to the petition. On or about the 22nd of April 1964 a notice to quit was issued by the Deputy Director of Estates and Ex-Officio Under Secretary to the Government of India, on behalf of the President of India, withdrawing the earlier notice dated 31st March 1964 and calling upon the company to quit and vacate the said premises on the expiry of the month of May 1964. It was stated in the said notice that a portion of the premises held by the company was urgently required by the Government of India for its own use for allotment to the Central Government offices, after remodeling the premises. A copy of this notice is annexure C to the petition. On 4th of May 1964 the company objected to the said notice. On the 22nd of June 1964 one Shri T.C. Jain, describing himself as the Estate Officer appointed under the said Act, purported to give notice under Sub-section (1) of Section 4 of the said Act. It was stated in the said notice that the said Estate Officer was of the opinion, on grounds specified in the notice, that the company was in unauthorized occupation of the public premises mentioned in the schedule to the said notice and that it should be evicted from the said premises. A copy of the said notice is annexure ''E'' to the petition. On the 18th of August 1964 a fresh notice was issued by the said Estate Officer asking the company to show cause under Sub-section (1) of Section 4 of the said Act. The relevant part of the said notice is set out below:

Whereas I, the undersigned, am of opinion on the grounds specified below, that you are in unauthorized occupation of the public premises mentioned in the schedule below and that you should be evicted from the said premises:

GROUNDS

The tenancy in favour of Messrs. Standard Literature Co. (P) Ltd. in respect of their occupation of a portion of premises Nos. 13, 13/1, 13/2 and 13/3, Old Court House Street and 1, 2 and 2/1 Mangoe Lane, Calcutta, more fully described in the schedule below, has been terminated on the expiry of the month of May 1964 by a notice

dated 22.4.64, from the Deputy Director of Estates and Ex-officio Under Secretary to the Government of India, Ministry of W.H. and Rule (Directorate of Estates), New Delhi and they were called upon to quit, vacate and hand over possession of the accommodation to the Government, but they have failed and neglected to do so.

Now, therefore, in pursuance of Sub-section (1) of Section 4 of the Act I hereby call upon you to show cause on or before the 2.9.64 why such an order of eviction should not be made.

SCHEDULE

Room (s) No. 22, 24, 27 and 28 on the ground floor, 46, 52, 56, 57, 58, 60, 64, 65, 66, 66/1 and 67 on the 1st floor, Half of 47 and 66 common staircase on the 1st floor in premises Nos. 13, 13/1, 13/2 and 13/3, Old Court House Street and 1, 2, and 2/1, Mangoe Lane, Calcutta containing an area of approximately 5879 cft.

2. On the 2nd of September 1964 the company showed cause and objected to the vacating of the said premises. Thereafter, there was a hearing before the Estate Officer and on the 27th November 1964 the Estate Officer passed an order, a copy of which is annexure ''H'' to the petition. The company inter alia took the point that the provisions of the said Act are unconstitutional and void. The Estate Officer stated that he was unable to decide the constitutional point, although he gave his brief views with regard to the points that were raised. By the said order, in exercise of the principles conferred on the said Officer under Sub-section (1) of Section 5 of the said Act, the company was directed to vacate the said premises within thirty days of the date of the publication of the said order. It was stated that in the event of refusal or failure to comply with the said order the company and all other persons in occupation thereof were liable to be evicted from the said premises, if need be, by use of such force, as might be necessary. On the same date, the company gave notice demanding justice and made an application to this Court whereon, on the 10th of December 1964 a Rule was issued by this Court calling upon the opposite parties to show cause why a writ in the nature of Mandamus should not be issued directing them to forbear from giving effect to the order dated 27th November 1964 or why a writ in the nature of Certiorari should not be issued, setting aside or quashing the said order, and for other reliefs. An interim order was passed which has been extended from time to time.

3. Before I proceed further, it will be necessary to consider the provisions of the said Act. The said Act of 1958 was preceded by the Government Premises (Eviction) Act 1950 (Central Act XXVII of 1950). This Act was promulgated because Government was faced with the fact that many of its properties came to be in the occupation of unauthorized persons and it was found that if the ordinary legal remedies were to be pursued, there would be inordinate delay. This Act was challenged as ultra vires and in (1) Jagu Singh v. M. Shaukat Ali and Anr. 58 CWN 1066, I held that the 1950 Act was ultra vires and void, as infringing the provisions of Article 19(1)(f) of the

Constitution. Under the provisions of the 1950 Act, the title of a citizen to property was to be decided upon the subjective satisfaction of the "competent authority" who may have no competence whatsoever to decide such a question, and behind the citizen''s back, without giving him any opportunity of vindicating his title, and the jurisdiction of the Civil Court was taken away. I held that the provisions of the Act constituted a wholly unreasonable restriction on the fundamental right granted to a citizen of acquiring and holding property and as a such was void. The same view was taken by the Allahabad High Court in (2) Brigade Commander, Meerut Sub-Area and Another Vs. Ganga Prasad and Another, . The Punjab High Court in (3) Satish Chander and Anr. v. Delhi Improvement Trust, AIR 1958 Punjab 1, held that the impugned Act did not offend against Article 14, but offended against the provision of Article 19(1)(f). As a result of these decisions, the said Act of 1958 was promulgated and came into operation on the 16th September 1958. It has been once repealed and amended by the Repealing and Amending Act, 1960 (Act 58 of 1960) and further amended by the Public Premises (Eviction of Unauthorized Occupants) Amendment Act, 1963 (Act 40 of 1963). The preamble of the Act describes it as an Act "to provide for the eviction of unauthorized occupants from Public Premises and for certain incidental matters" Section 2(1) is the definition section. Clause (a) defines an "estate officer" as an officer appointed as such by the Central Government u/s 3. By Clause (b) "public premises" has been defined to mean any premises belonging to, or taken on lease or requisitioned by, or on behalf of the Central Government. By Clause (e), "unauthorized occupation" in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority under which he was authorised to occupy the premises has expired or has been determined, for any reason whatsoever. Section 3(a) provides that the Central Government may, by notification in the Official Gazette, appoint such persons, being gazetted officers of Government or officers of equivalent rank of the Corporation or any committee or the authority referred to in Clause (b) of Section 2, as it thinks fit to be estate officers for the purposes of the said Act. Sections 4 and 5 are the main operative sections in the said Act and they are set out below:

4. (1) If the Estate Officer is of opinion that any persons are in unauthorized occupation of any public premises and that they should be evicted, the Estate Officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall -

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim in-test in, the public premises, to show cause, if any, against

the proposed order on or before such date as is specified in the notice, being a date not earlier than ten days from the date of issue thereof.

(3) The Estate Officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

(4) Where the Estate Officer knows or has reasons to believe that any persons are in occupation of the public premises, then, without prejudice to the provisions of Sub-section (3), he shall cause a copy of the notice to be served on every such person by post or by delivering or tendering it to that person or in such other manner as may be prescribed.

(5) (1) If, after considering the cause, if any, shown by any person in pursuance of a notice u/s 4 and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the Estate Officer is satisfied that the public premises are in unauthorized occupation, the Estate Officer may, on a date to be fixed for the purpose, make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises.

(2) If any person refuses or fails to comply with the order of eviction within (thirty days) of the date of its publication under Sub-section (1) the Estate Officer or any other officer duly authorised by the Estate Officer in this behalf my evict that person from, and take possession of the public premises and may, for that purpose, use such force as may be necessary.

4. u/s 9, an appeal shall lie from every order of the Estate Officer to an appellate officer who shall be the District Judge of the district in which the public premises are situate or such other judicial officer in that district of not less than ten years'' standing as the District Judge may designate in the behalf. Section 10, provides that every order made by an Estate Officer or an appellate officer shall be final and shall not be called in question in any original suit, application or execution proceeding, and to injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the said Act. Section 13 confers upon the Central Government the power to frame rules, for carrying out the purposes of the said Act. It is this Act of 1958 which is challenged in this case as ultra vires. Before I proceed to deal with the points that have been raised, it is necessary to refer to certain cases, in order to clear the ground. The first is a Bench decision of this Court, (4) Sankar Lal Saha Vs. The Superintendent, Gun and Shell Factory, Cossipore and others, . In that case, S.K. Dutta, J., was of the opinion that the said Act offends against both Articles 19(f) and

14 of the Constitution. R. N. Dutt, J. however, disagreed with this part of the decision. However, they were both agreed that an order u/s 5 was not validly made, in the facts and circumstances of the case. According to S.K. Dutta, J. a person could not be in unauthorized occupation under any of the provisions of the said Act. He could only become a person in unauthorized occupation, if his tenancy or his right of occupation had been validly determined under any other law, or if he was a trespasser. Both the learned Judges agreed that the reasons to be stated in a notice, u/s 4(2)(a) must be other than the bare fact that notice to quit had been given and the tenancy had been terminated. In the result, it cannot be said that the vires of the Act was decided in the said case. In a Bench decision of the Punjab High Court (5) Hari Kishen Das and Another Vs. Union of India (UOI) and Others, , it was held that the said Act, or in other words, the very statute that we are concerned with in this case, is valid and does not offend the provisions of Article 19(1)(f) of the Constitution. In (6) Sucha Singh Vs. Administrative Officer, Afzalgarh Colonization Scheme, Bijnor and Others, , a Full Bench of the Allahabad High Court held that the Uttar Pradesh Government Land (Eviction and Recovery of Rent) Act 29 of 1953 was not unconstitutional. In (7) The Northern India Caterers Private Ltd. Vs. The State of Punjab and Another, , a Full Bench of the Punjab High Court upheld the provisions of the Punjab Public Premises and Lands (Eviction and Rent Recovery) Act (31 of 1959). In my opinion, it is rather dangerous to examine and decide the vires of an Act by reference to decisions concerning the vires of other statutes, particularly if the one is a Central Statute and the other is a State Legislation. We are informed, however, that the Punjab Act is analogously worded. Because of this, it may be useful to look into this decision which I shall do presently. I will now come to the several grounds which have been taken in this case, to challenge the vires of the said Act. Apart from the grounds challenging the constitutionality of the said Act, there is one point taken, which is analogous to the point decided in the Division Bench decision of this Court presided over by S.K. Dutta, J., mentioned above, namely that the notice u/s 4 was defective, as no ground was given therein as required by law.

5. As regards the constitutional grounds, they are as follows:

(1) u/s 4(1) of the said Act the condition precedent is that the Estate Officer should be of the opinion that persons are in unauthorized occupation of any public premises and that they should be evicted. It is argued that the prescribed qualifications for being appointed as an Estate Officer under Clause (a) of Sub-section (1) of Section 2 of the said Act does not remedy the objections that were put forward against the (1950) Act A "gazetted officer" may even be a humble person like the personal assistant of a minister. To made property rights dependent on the subjective satisfaction of such a person is an unreasonable restriction on the fundamental rights of a citizen to hold property under Article 19(1)(f).

(2) The Estate Officer who forms a subjective opinion on the question of eviction of a citizen, is himself the person who is to adjudicate upon the objection of the citizen.

This is in violation of the rules of natural justice and it is an unreasonable restriction on the fundamental rights of a citizen to hold property under Article 19(1)(f).

(3) That the Act is violative of the provisions of Article 14 of the Constitution because -

(a) the provisions of the said Act are more onerous, drastic and prejudicial to the citizen than the provisions contained in the Transfer of Property Act, 1882 and the West Bengal Premises Tenancy Act, 1956 and as such are discriminatory and ultra vires of the Constitution;

(b) there is discrimination violative of Article 14 in making distinction between persons in occupation of Government property and persons in occupation of private property which distinction has no relation to the object of the Act, nor establishes any intelligible differentia.

6. I shall first of all deal with the point which does not relate to the constitutionality of the said Act, namely the challenge to the notice u/s 4. The wordings of the relevant notice u/s 4, dated 18th of August 1964 have been set out above. In the notice to quit given on the 22nd April 1964 (annexure "C" to the petition) the reason for eviction of the company has been expressly mentioned, namely that the portion of the premises held by the company was urgently required by the Government of India for its own use, for allotment to the Central Government offices after remodeling the building. In this notice under Sub-section (1) of Section 4, however, the only ground that has been mentioned was that a notice to quit had been given and the tenancy had been terminated. If the Division Bench judgment (4) Sankar Lal Saha Vs. The Superintendent, Gun and Shell Factory, Cossipore and others, , is correct, then this notice is invalid. In our opinion, that decision is not correct and should be overruled upon this point. In so far as S.K. Dutta, j., held that a person cannot be in unauthorized occupation by virtue of the said Act, but because of the existence of the factors mentioned in Clause (e) of Section 2, no exception can be taken. But in so far as the learned Judges have held that in a notice u/s 4(1), the grounds specified must be something other than the service of a notice to quit and the expiry of its term, it has been wrongly decided. A tenant of properties belonging to Government is in a somewhat worse position than a person holding private lands. The proviso to Section 1 of the West Bengal Premises Tenancy Act, 1956 states that the 1956 Act does not apply to any premises belonging to Government. Therefore, where the tenancy of a person has been properly determined under the Transfer of Property Act, then in the case of lands belonging to Government, there is no defence of eviction. All that Sub-section (2) of Section 4 requires is that the notice under Sub-Section 91) should specify the grounds on which the order of eviction was proposed to be made. If a notice to quit has been validly served, and the period specified therein has expired, then the person served is in "unauthorized occupation" as defined under Clause (e) of Section 2(1) of the said Act. I do not see why this should not be a sufficient ground for an order of eviction under the said

Act. In such a case, the person concerned has no defence, and all that was happening is that the machinery of eviction was being expedited. This ground, therefore, is not of substance.

7. Before I deal with the constitutional points, it will be necessary to make certain observations to clear the atmosphere. It will be noted that the said Act isn''t a general Act but deals with a special problem, namely the problem of taking speedy action against unauthorized persons is occupation of governmental lands. It is permissible to look into the statement of objects and reasons to find out the background of a particular legislation, see (8) The State of West Bengal Vs. Subodh Gopal Bose and Others, . In the statement of objects and reasons to the present statute, we find the following:

The Public Premises (Eviction) Act, 1950, was enacted to provide a speedy machinery for the eviction of persons in unauthorized occupation of public premises and certain incidental matters. This Act had been declared ultra vires by the Calcutta, Allahabad and Punhab High Courts.

8. There is then a reference to my judgment where I held that the provisions of the Act constituted a wholly unreasonable restriction on the fundamental right guaranteed to a citizen, of acquiring and holding property. According to the Allahabad High Court, the provisions of the Act were discriminatory. The Punjab High Court held that it was not violative of Article 14 of the Constitution but was violative of Article 19(1)(f). The statement proceeds to say as follows:

The above decisions have made it impossible for Government to take speedy action even in flagrant cases of unauthorized occupation of public premises and the only way in which such persons may be evicted is by the ordinary process of law which often involves considerable delay. It has, therefore, become necessary to provide a speedy machinery for the eviction of persons who are in unauthorized occupation of public premises, keeping in view at the same time the necessity of complying with the provisions of the Constitution. The present Bill seeks to achieve this object.

9. This Bill provides for the appointment of Estate Officer who have been empowered to evict persons in unauthorized occupation of public premises. The procedure which the Estate Officer is to follow for evicting such persons has been laid down in the Bill itself. Reasonable opportunity has to be given to the persons affected to show cause against the proposed order of eviction and also to present their case to the Estate Officer at the time of the inquiry. If the Estate Officer makes an order of eviction, he is to give the persons in occupation of the public premises thirty days'' time to vacate the premises. Provision has also been made for an appeal against every order of the Estate Officer to an independent judicial officer who will be the District Judge of the district in which the public premises are situated or such other judicial officer of not less than ten years'' standing as the District Judge may nominate in this behalf. The provisions for a fair hearing before Estate Officers and

that of an appeal against their orders to an independent judicial officer will be a safeguard against any arbitrary exercise of powers by the Estate Officers." (Gazette of India extra, Pt. II-S 3 p. 386)

10. Obviously, the very basis of this impugned statute is that Government property requires special consideration and the process of eviction from such property should be the subject matter of special laws, the process being expedited; as under the general law, the process of eviction of a tenant is a long-drawn process. Is it permissible, therefore, to treat Government in such matters on a special footing? On this point the following authorities have been cited: In (9) Manna Lal and Another Vs. Collector of Jhalawar and Others, , the Supreme Court was considering the vires of the Rajasthan Public Demands Recovery Act (5 of 1952). The Appellants in that case were traders of Jhalwar. The Collector of Jhalwar served on the Appellants a notice u/s 6 of the Rajasthan Public Demands Recovery Act, 1952 for the recovery from them, as a public demand, of a sum of rupees exceeding two lakhs, said to be due on account of loans taken by them from the Jhalwar State Bank. The Appellants contended that this was not a public demand. It was held that this contention was not sound, and it was a public demand. Another point argued was that in so far as the Act enables monies due to the Government in respect of its trading activities to be recovered by way of a public demand, it offended Article 14 of the Constitution, because it made a distinction between other bankers and Government acting as a banker, in respect of recoveries of monies due. Sarkar, J., said as follows:
It seems to us that the Government, even as a banker, can be legitimately put in a separate class. The dues of the Government of a State are the dues of the entire people of the State. This being the position, a law giving special facility for the recovery of such dues cannot, in any event, be said to offend Article 14 of the Constitution.

11. In another Supreme Court decision, (10) Nav Rattanmal and Others Vs. The State of Rajasthan, , the provisions of Article 149 of the Limitation Act was being considered. In that case, Government was proceeding against certain persons in respect of defalcation of money from the Government treasury. One of the defences put forward was that the claim was barred by limitation under Article 83 of the Limitation Act, and the provisions of Article 149, which fixes a period of 60 years for suits by Government is unconstitutional, as being violative of Article 14 of the Constitution. It was argued that there was no rational basis for treating claims by Government differently from those of private individuals, in the matter of time within which they can be enforced by suit. Aryanagar, J. said as follows:

First and foremost there is this feature that the Limitation Act, though a statute of repose, and intended for quieting titles, and in that sense looks at the problem from the point of view of the Defendant with a view to provide for him a security against stale claims, addresses itself at the same time also to the position of the Plaintiff.

12. The learned Judge then cited instances of persons under legal disability like minors and insane persons or in the case of an express trust, and proceeded to say as follows:

It is not necessary to go into the details of these provisions but it is sufficient to state that the approach here is from the point of view of protecting the enforceability of claims, which, if the ordinary rules applied, would become barred by limitation. It is in great part (sic) on this principle that it is said that subject to statutory provision, while thte maxim vigilantibus et non dormientibus jure Subveniunt is a rule for the subject, the maxim, nullum tempus occurit regi is in general applicable to the Crown. The reason assigned was, to quote Coke, that the State ought not to suffer for the negligence of its officers or for their fraudulent collusion with the adverse party. It is with this background that the question of the special provisions contained in Article 149 of the Act has to be viewed. First, we have the fact that in the case of the Government if a claim becomes barred by limitation, the loss falls on the public, i.e., on the community in general and to the benefit of the private individual who derives advantage by the lapse of time. This itself would appear to indicate a sufficient ground for differentiating between the claims of an individual and the claims of the community at large.

13. It was held that there was no discrimination. In another Supreme Court decision, (11) Baburao Shantaram More Vs. The Bombay Housing Board and Another, , it was held that Section 3A of the Bombay Housing Board Act, 1948 which exempts lands and buildings belonging to or vested in the Bombay Housing Board, from the operation of the Bombay Rents, Hotel and Lodging House Rates Control Act, does not offend against the equal protection clause of Article 14 of the Constitution, and the exemption given by Section 4 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 to certain classes of tenants had a rational relation to the objects sought to be achieved by the Act. It was held by Das, J., that the business of Government was to solve the accommodation problem, and to satisfy the public need of housing accommodation, and it was for the purpose of achieving this object that the Board was incorporated and established. Therefore, the tenants of the Government of local authorities or Board were in no need of such protection as the tenants of private landlords are, and this circumstance is a cogent basis for differentiation. It will be remembered that under the proviso of Section 1 of the West Bengal Premises Tenancy Act, 1956, premises belonging to Government have been excluded from the operation of the Act. In the Full Bench case of (6) Sucha Singh Vs. Administrative Officer, Afzalgarh Colonization Scheme, Bijnor and Others, , the Allahabad High Court was considering the vires of the Uttar Pradesh Government Land (Eviction and Recovery) Act, 1953. The abovementioned decisions of the Supreme Court were cited but it was argued that money was on a different footing to land and in case of land no such discrimination was allowed. This argument was repelled. Desai, C.J., said as follows:

Same argument can be advanced in the instant case. The ordinary procedure for evicting a trespasser is highly dilatory and it is a notorious fact that litigation remains pending for years and that a person does not really succeed in evicting a trespasser from his land until the matter has passed through several Courts, each taking years to decide the dispute. With suits giving rise to first appeals, second appeals, and revisions and then petitions for writs with special appeals and orders staying execution of decrees, a person would be fortunate if he succeeds in getting possession back from a trespasser in less than ten years. It will be the public that will suffer and it would be a private individual - the trespasser - who will gain. In the case of a trespasser on private land, it is only one individual who suffers on account of the delay. A distinction made by the legislature between loss caused to an individual and loss caused to the whole public by enacting a special procedure to be followed by Government in evicting trespassers upon Government or public land is a rational one.

14. Let us now come to the precise Constitutional grounds taken in this case. The constitutional grounds taken can be divided under two headings. The first heading deals with Article 19(1)(f) of the Constitution, that is to say the fundamental right to acquire, hold and dispose of property. This provision has to be read with Clause (5) of Article 19, which empowers the State to make a law, even though it violates the provisions of Article 19(1)(f) if it imposes reasonable restrictions on the rights conferred by it in the interest of the general public. The second heading to Article 14, which lays down the principle of equality before the law and strikes out discriminatory legislation. Coming to the right guaranteed by Article 19(1)(f), we have to deal with the principle of reasonable restriction. This test has been described by Das, C.J. in the following terms in (12) Virendra v. The State of Punjab and another, AIR 1957 SC 897:

The test of reasonableness has been laid down by this Court in (13) State of Madras Vs. V.G. Row, , in the following words:

"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern, of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

This dictum has been adopted and applied by this Court in several subsequent cases."

15. The way that the objection under Article 19 is framed before us is as follows: Under the said Act, the prescribed qualification for being appointed as an Estate Officer is no more than that he should be a "gazetted officer." It is said that the

matter depends upon the subjective satisfaction of this person, which satisfaction may be quite arbitrary. On this point the following decisions have been referred to by the Petitioners: The first is a Supreme Court decision (14) Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others, . In that case, the facts were as follows: The Petitioner was a firm of traders who had, prior to the cancellation of their licence, been carrying on business of retail sale of coal at a coal depot held by them in the town of Kanpur. In 1953, was promulgated the Uttar Pradesh Coal Control Order, 1953 in exercise of the power conferred upon Government by Section 3(2) of the Essential Supplies Act, 1946. By this control order, the District Magistrate of the district or any other officer authorised by him to perform his function under the Order, was designated as "the licensing authority". It was provided that no person shall stock, sell, store or utilize coal in the State except under a licence granted under the said Order. Under Clause 3(2)(b), the said coal controller could exempt any person he likes from the operation of the order. Clause 4(3) ran as follows:

The licensing authority may grant, renew or refuse to renew a license and may suspend, cancel, revoke or modify any licence or any terms thereof granted by him under the Order for reasons to be recorded, provided that every power which is under this order exercisable by the Licensing Authority shall also be exercisable by the State Coal Controller or any person authorised in this behalf.

16. Both these provisions were held to be unreasonable restrictions, and violative of Article 19 of the Constitution. Mukherjea, J. said as follows:

Nobody can dispute that for ensuring equitable distribution of commodities considered essential to the community and their availability at fair prices, it is quite a reasonable thing to regulate sale of these commodities through licensed vendors to whom quotas are allotted in specified quantities and who are not permitted to sell them beyond the prices that are fixed by the controlling authorities. The power of granting or withholding licenses or of fixing the prices of the goods would necessarily have to be vested in certain public officers or bodies and they would certainly have to be left with some amount of discretion in these matters.

So far no exception can be taken; but the mischief arises when the power conferred on such officers is an arbitrary power unregulated by any rule or principle and it is left entirely to the discretion of particular persons to do anything they like without any check or control by any higher authority. A law or order, which confers arbitrary and uncontrolled power upon the executive in the matter of regulating trade or business in normally available commodities cannot but be held to be unreasonable. As has been held by this Court in (15) ''Chintaman Rao v. State of Madhya Pradesh'' AIR (1951) S.C. 1118 the phrase ''reasonable restriction'' connotes that the limitation imposed upon a person in enjoyment of a right should not be arbitrary or of an excessive nature beyond what is required in the interest of the public.

Legislation, which arbitrarily or excessively invades the right, cannot be said to contain the quality of reasonableness, and unless it strikes a proper balance between the freedom guaranteed under Article 19(1)(g) and the social control permitted by Clause (6) of Article 19, it must be held to be wanting in reasonableness. It is in the light of these principles that we would proceed to examine the provisions of this Control Order, the validity of which has been impugned before us on behalf of the Petitioners."

17. As stated above, the impugned provisions of the Order mentioned above were held to be unreasonable restrictions on the fundamental rights of the Petitioners and therefore set aside. In Virendra''s case (Supra), the provision of law impugned were, Sections 2 and 3 of the Punjab Special Powers (Press) Act, 1956. u/s 2(1), the State Government or any authority so authorised in this behalf if satisfied that such action was necessary for the purpose of preventing or combating any activity prejudicial to the maintenance of communal harmony affecting or likely to affect public order, may, by order in writing addressed to a printer, publisher or editor prohibit the printing or publication of any document or any class of documents of any matter relating to a particular subject or class of subjects for a specified period or in a particular issue or issues or a newspaper or periodical. It is provided that no such order shall remain in force for more than two months and the person against whom the order was made had the right of representation to the State Government against the said order. u/s 3, the State Government or any authority authorised by it in this behalf, if satisfied that such action was necessary for the purpose of preventing or combating any activity prejudicial to the maintenance of communal harmony affecting or likely to affect public order may by a notification, prohibit the bringing into Punjab of any newspaper, periodical, leaflet or other publication. One Virendra was the editor, printer and publisher of a journal - Daily Pratap, published from Jullunder and one Narendra was the editor, printer and publisher of the Daily Pratap and Vir Arjun published from New Delhi. An order was made u/s 2 prohibiting Virendra from printing and publishing any article, report, news item, letter or any other material of any character relating to or connected with the "Save Hindu Agitation" for a period of two months and an order was served u/s 3 on Narendra prohibiting the bringing into Punjab of his newspaper printed and published in Delhi. It was contended that these sections impose not merely restriction on, but total prohibition against, the exercise of the fundamental right under Article 19(1)(a) and 19(1)(g) of the Constitution and were not saved by the protecting section embodied in Article 19(2) and 19(6). Das, C.J. held that crucial question must always be: Are the restrictions imposed on the exercise of the rights under Article 19(1)(a) and 19(1)(g) reasonable, in view of all the surrounding circumstances? In other words, were the restrictions reasonably necessary in the interest of public order under Article 19(2) or in the interest of general public under Article 19(6)? The learned Chief Justice proceeded to say as follows:

It was for preserving the safety of the State and for maintaining the public order that the Legislature enacted this impugned Statute. Legislature had to ask itself the question: who will be the appropriate authority to determine at any given point of time as to whether the prevailing circumstances require some restriction to be placed on the right to freedom of speech and expression and the right to carry on any occupation, trade or business and to what extent?.

The answer was obvious, namely, that as the State Government was charged with the preservation of law and order in the State, as it alone was in possession of all material facts, it would be the best authority to investigate the circumstances and assess the urgency of the situation that might arise and to make up its mind whether any, and if so, what, anticipatory action must be taken for the prevention of the threatened or anticipated breach of peace.

The Court is wholly unsuited to gauge the seriousness of the situation, for it cannot be in possession of materials which are available only to the executive Government . . . . . gave wide powers to the State Government or the authority to whom it might delegate the same, to be exercised only if it were satisfied as to the things mentioned in the two sections. The conferment of such wide powers to be exercised on the subjective satisfaction of the Government of its delegate as to the necessity for its exercise for the purpose of preventing or combating any activity prejudicial to the maintenance of communal harmony affecting or likely to affect public order cannot, in view of the surrounding circumstances and tension brought about or aided by the agitation in the Press, be regarded as anything but the imposition of permissible reasonable restrictions on the two fundamental rights."

18. The next case to be considered is, (16) Harishankar Bagla and Another Vs. The State of Madhya Pradesh, . In that case, the fact were as follows: The Appellants Harishankar Bagla and his wife Sm. Gomti Bagla were arrested at Itersi by the railway police for contravention of Section 7 of the Essential Supplies (Temporary Powers) Act, 1946 read with Clause (3) of the Cotton Textile (Control of movement) Order, 1948 as they were found in possession of cotton weighing over 6 mds. without any permit. u/s 3 of the Cotton Textile (Control of movement) Order, 1948 it is provided that no person shall transport or cause to be transported by rail, or road; yarn, or apparal except under and in accordance with a general permit or a special transport permit issued by the Textile Commissioner. These provisions were challenged on the ground that they gave to the Textile Commissioner an unregulated or arbitrary discretion to refuse or to grant a permit. It was held that a law for regulating movement of goods by making it conditional on the issue of a permit was not an unreasonable restriction, since the measure was an emergency measure and a policy could be said to exist behind the Order, namely, regulating transport of cotton textile in a manner to ensure an even distribution of the commodity in the country and to make it available at a fair price to all. The grant or refusal of a permit is governed by this Policy and the discretion given to the Textile

Commissioner is to be exercised in such a way as to effectuate the policy. If there was an abuse of the power there was ample power in the Courts to undo the mischief. Therefore, it cannot be said to be arbitrary.

19. The next case to be considered is (17) M/s. Pannalal Binjraj v. Union of India, AIR 1957 SC 197. In that case, Section 6(7A) of the Income Tax Act, 1922 was challenged, inter alia on the ground that it was violative of Article 19(1)(g) of the Constitution.

Section "5(7A)" of the Income Tax Act as under:

The Commissioner of income tax may transfer any case from one I.T.O. subordinate to him to another, and the Central Board of Revenue may transfer any case from one I.T.O. to another. Such transfer may be made at any stage of the proceedings, and shall not render necessary the reissue of any notice already, issued by the I.T.O. from whom the case is transferred.

20. It was argued that an uncontrolled power was vested in the Commissioner of income tax. It was calculated to inflict considerable inconvenience and harassment on Assessees. They might have to produce before the Income Tax Officer their books of account etc. hundreds of miles from where they carried on business. Its partners or principal officer might have to be away from the head office for a considerable period of time neglecting their business. They might have no suitable place where they could put up during that period. There would be extra expenditure for railway fare etc. It was held, however, that the provisions were neither violative of Article 19 nor Article 14. Convenience of the Assessee is the main consideration in determining the place of assessment but even so, the exigencies of tax collection have got to be considered and the primary object viz. the assessment of income tax has got to be achieved Bhagwati, J. sad as follows:

It may also be remembered that this power is vested not in minor officials but in top-ranking authorities like the Commissioner of the Income Tax and the Central Board of Revenue who act on the information supplied to them by the Income Tax Officer concerned. This power is discretionary and not necessarily discriminatory and abuse of power cannot be easily assumed where the discretion is vested in such high officials. [Vide (18) Matajog Dobey Vs. H.C. Bhari,]. There is moreover a presumption that public officials will discharge their duties honestly and in accordance with the rules of law. [Vide (19) People of the State of New York v. John E. Van De Carr etc. (1905) 199 US 552: 50 Law Ed. 305]* * * .

21. This presumption, however, cannot be stretched too far and cannot be carried to the extent of always holding that there must be some undisclosed and unknown reason for subjecting certain individuals or corporations to hostile and discriminatory treatment [vide (20) Gulf, Colorado etc. v. W.H. Ellis, (1897) 165 US 150]. There may be cases where improper execution of power will result in injustice to the parties. As has been observed, however, the possibility of such discriminatory treatment cannot necessarily invalidate the legislation and where there is an abuse

of such power, the parties aggrieved are not without ample remedies under the law [vide (21) Dinabandhu Sahu v. Jadumoni Mangaraj, AIR 1954 SC 411 at p. 414]. What will be struck down in such case will not be the provision which invests the authorities with such power but the abuse of the power itself."

It will be remembered in (22) Jagu Singh v. Shaukat Ali and Anr. 58 CWN 1066 Act was struck down by me was that the "competent authority" under the 1950 Act could be "any" person, whether such person had the necessary qualifications for evaluating title to immoveable property or not. I cited a Bench decision of this Court, (23) Khagendra Nath De Vs. District Magistrate of West Dinajpur, , where Section 38 of the West Bengal Security Act, 1950 was struck down by Harries, C.J. on the ground that Section 38 was framed in such a manner as would permit Government to delegate its power to officers who, might be unfitted to be trusted with the power of making such orders. u/s 38, power could be delegated to any person whatsoever, and there was no restriction. It is stated that this has been remedied in the present Act by Section 3 under which an ''Estate Officer'', for the purposes of the said Act, must be a Gazetted Officer of the Government or officers of equivalent rank of the Corporation or any committee etc. The learned Advocate General has argued that a "Gazetted Officer" includes even personal assistants of ministers. He has sought to establish this proposition by producing official gazettes where some personal assistants to ministers are indeed declared to be Gazetted Officers. This power of appointing Estate Officers is challenged by the Petitioners on another ground. It is argued that Estate Officers are delegates of Government and therefore represent one of the contesting parties. Therefore, in conferring powers on an Estate Officer, to elect as to whether proceedings should be taken under the said Act or under the ordinary law, and in issuing notice to show cause, and hearing the objection against the same, the Estate Officers are really made Judges in their own case and this was in violation of the rules of natural justice and as such constitutes an unreasonable restriction on the fundamental rights of the pets. These arguments are sought to be met in the following way: Firstly, reference is made to cases which have been already noticed, which establish that it is not unreasonable to consider the Government as requiring special protection and that providing for speedy evacuation in respect of lands belonging to Government which are in unauthorized occupation, is a permissible object of legislation. Next, it is pointed out that in a number of statutes, officers of Government have to discharge similar functions, including functions which are quasi judicial. They are given the right to form an opinion and to take action thereon. For example, u/s 34 of the Income Tax Act of 1922 (corresponding to Section 147 of the present Act) Income Tax officers are entrusted with the task of forming an opinion as to whether an assessment is to be reopened, and they can issue notices and hear objections of the Assessee. The same procedure is incorporated in the Customs Act, 1962 [Section 110(1) red with Section 124], in the Public Demand Recovery Act, (Section 4 read with Sections 9 and 10), in the Bengal Finance Sales Tax Act, 1941 [Section 14(3)] and in the Land Acquisition

Act (Sections 4, 5A and 6), Thika Tenancy Act (West Bengal Act 11 of 1949). The Bengal Municipal Act, and The Calcutta Municipal Act, 1951. u/s 12(1) of the Criminal Procedure Code, the State Government can appoint as many persons "as it thinks fit" as Magistrates, besides the District Magistrate. The power of Government to appoint "fit" persons in its discretion, is therefore well-established. It is pointed out that Section 3(a) provided that only such Gazetted Officers shall be appointed as Estate Officers as the Central Government thinks fit to be so appointed.

23. Next, it is pointed out that in the said Act, unlike the 1950 Act, there is a provision for appeal. u/s 9 an appeal shall lie from every order of the Estate Officer to an appellate officer who shall be the District Judge of the district in which the public premises are situate or such other judicial officer of that district of not less than ten years'' standing as the District Judge may designate in this behalf. Thus, recourse to judicial process is not entirely prohibited. Where the object of the Act is in accordance with law, the mere fact that executive officials are given wide powers, is not by itself considered to be an unreasonable restriction. As regards the argument that a "Gazetted Officer" may even include a personal assistant to a minister, it is argued that it is not any and every Gazetted Officer who is appointed as an Estate Officer, but only such persons being Gazetted Officers of the Government, as it thinks fit to be appointed as Estate Officers, may be so appointed. Since the power is given to Government, it may be assumed that an appointment will be made in a responsible way. If the power is abused, then it is the abuse that will be struck down, but the possibility of an abuse of power will not render the statute itself ultra vires. It is pointed out that the first safeguard is that a person acting as an Estate Officer is to be a person thought fit to act as such by Government, secondly, in making his order, Section 5(1) of the said Act provides that reasons shall be recorded and thirdly an appeal to a judicial officer has been provided for. It is further pointed out that the opinion to be formed by the Estate Officer is merely a tentative opinion. It merely leads to the issue and service of a notice to show cause. The party affected is fully heard and the Estate Officer has to record reasons for his ultimate order, which is not final but an appeal is provided before a judicial officer like a District Judge or a judicial officer of not less than ten years'' standing. Further, there is provision for rules being made under the said Act, and rules have been prescribed. It is complained that under the rules only a summary of evidence has to be taken, but this is also the case in many judicial proceedings in Court. All these safeguards render the restrictions reasonable. In my opinion this argument should be accepted. In the 1950 Act, the power was unrestricted and arbitrary. In the present Act, power is limited by ample safeguards. If in a particular case, the appointment of the Estate Officer was such as was plainly reasonable, and an abuse of the powers conferred upon Government, there is always a remedy, by an application to Court in the writ jurisdiction for relief. See (17) Pannalal Binjraj Vs. Union of india (UOI), . This proposition is typified in a Supreme Court decision - (24) Manak Lal Vs. Dr. Prem Chand, . A complaint was filed against

Manak Lal u/s 13 of the Legal Practitioners Act. It was alleged that the Appellant was guilty of professional misconduct. The matter was sent for enquiry to a Tribunal nominated by the Chief Justice of the High Court of Rajasthan u/s 10(2) of the Bar Council Act. The Tribunal held an enquiry, recorded evidence and came to the unanimous conclusion that the Appellant was guilty of professional misconduct. The High Court agreed with the findings of the Tribunal and directed that the Appellant should be removed from practice. The matter came up before the Supreme Court It was held that the Tribunal consisted of three members, with Shri Chhangani as Chairman. It appeared that in proceedings u/s 145 of the Criminal Procedure Code, which was involved in the complaint, Shri Chhangani had appeared on behalf of Dr. Prem Chand. It was held as follows:

It is well settled that every member of a Tribunal that is called upon to try issues in judicial or quasi-judicial proceedings must be able to act judicially; and it is of the essence of judicial decisions and judicial administration that Judges should be able to act impartially, objectively and without any bias. In such cases the test is not whether in fact a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done.

24. The findings of the Tribunal as well of the High Court were set aside. The facts were similar in another decision of the Supreme Court in (25) Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, . That was a case under the Motor Vehicles Act, 1939 as amended by Act 100 of 1956. The amending Act inserted a new chapter IV-A providing for the State Transport Undertaking running the business to the exclusion, complete or partial, of all other persons doing business in the State. Under the provision of the Act, a scheme had to be formulated for the purpose of efficient, adequate, economical and property coordinated transport service in the public interest, to operate the transport service mentioned therein. Objections could be filed and were to be heard by an officer appointed by the Government. The officer appointed was the Secretary, Transport Department who was the head of the Transport Board which was an interested party in the dispute. It was held that such an interested party was likely to be biased. Therefore, the hearing by the Secretary, Transport Department and the proceedings before him were bad. The order was as follows:

In the result, for the reasons that the State Government did not make the enquiry consistent with the principles of natural justice in approving the scheme, the order approving the scheme is heeby quashed and a direction issued to Respondent I to forbear from taking over any of the routes in which the Petitioners are engaged in transport business. This judgment will not preclude the State Government from making the necessary enquiry in regard to the objections filed by the Petitioners in

accordance with law.

25. It will be observed that the law was not struck down but its abuse. I think that the learned Standing Counsel was right in his argument that it could not be said that under the said Act the Estate Officer is necessarily to be considered as a party to the dispute or that he was likely to be biased. Numerous statutes, some of which have been mentioned above, require an executive officer to come to a tentative opinion, and as long as an opportunity is given to the citizen affected to make representation effectively, it cannot be concluded that there is a violation of the rules of natural justice. It is rightly pointed out that under the said Act, neither the opinion nor decision of the executive officer is final, but it can be corrected by a judicial officer in appeal. In my opinion the argument of the learned Standing Counsel should be upheld. There is no violation of Article 19 of the Constitution.

26. I now come to the second branch of the argument, namely that the said Act is violative of the provisions of Article 14 of the Constitution. I have already set out above, the two subdivisions of this argument. The first is that the provisions of the Act are more onerous, drastic and prejudicial to the citizen than the provisions contained in the Transfer of Property Act, 1882 and the West Bengal Premises Tenancy Act, 1956 and as such are discriminatory. The second sub-division of the argument is that there is discrimination violative of Article 14 in making a distinction between the persons in occupation of Government property and persons in occupation of private property, which distinction, it is said, has no relation to the object of the and is without any intelligible differentia.

27. As regards the first sub-division, then learned Standing Counsel argues that the said Act is by no means more onerous than the ordinary law. It is pointed out that under the Transfer of Property Act, the owner of any premises can always terminate the tenancy by a notice to quit, and provided that the procedure laid down for serving a notice to quit is observed, the tenant has no defence. Protection is offered by the West Bengal Premises Tenancy Act, 1956. But under the proviso to Section 1, the Act does not apply to any premises belonging to, or taken lease of, by Government or any local authority or requisitioned by Government. Therefore, the said Act really provides additional safeguards where none existed before. It is true that instead of a suit, which takes a considerable time to be effective, a summary remedy has been evolved. But this is the very object of the Act. As stated above. It is permissible to treat lands held by Government on a special footing. Delay in obtaining possession of governmental lands affects prejudicially, not merely an individual but citizens in general. the providing of a speedy remedy is, therefore, a permissible object for a reasonable classification of governmental lands as the recipient of special privilege. As regards the general objection on the ground of discrimination, a number of decisions have been cited and will have to be noticed. On behalf of the Petitioners, the following authorities have been cited: In (26) Suraj Mall Mohta and Co. Vs. A.V. Visvanatha Sastri and Another, , certain sections of the

Taxation of Income (Investigation Commission) Act, 1947, were challenged as being violative of Article 14 of the Constitution. The object of the Act was to ascertain as to whether the actual incident of taxation on income in recent years had been in accordance with the provision of law and whether the procedure for assessment and recovery of tax was adequate to prevent evasion thereon. Section 3 authorises the Central Government to constitute a Commission to be called the Income Tax Investigation Commission. u/s 5, the Central Government was empowered at any time before 1st day of September 1948 to refer to the Commission for investigation and report any case or points in a case in which the Central Government has prima facie reasons for believing that a person has to a substantial extent evaded payment of taxation on income. The Commission was given sweeping powers and could require any person or banking or any other company to prepare and furnish, written statements of accounts and affairs and to give information on such points or matters as the Commission required. The Commission could not only proceed against the person against whom an investigation was ordered but if in course of investigation it was discovered that any other person had evaded payment of taxation on income, it could take proceedings against such other person. It was held that certain provisions of the Act dealt with the same class of persons who fall within the ambit of Section 34 of the Income Tax Act, 1922 and yet, the provisions of the Act were more onerous than the provisions of the income tax Act, 1922, Mahajan, C.J. said as follows:

The result is that these persons can be dealt with under the provisions of Act XXX of 1947, at the choice of the Commission, though they could also be proceeded with under the provisions of Section 34 of the Indian Income Tax Act. It is not possible to hold that all such persons who evade payment of income tax and do nation truly disclose all particulars or material facts necessary for their assessment and against whom a report is made under Sub-section (4) of Section 5 of the impugned Act by themselves form a class distinct from those who evade payment of income tax and come within the ambit of Section 34 of the Indian income tax Act.

It is well settled that in its application to legal proceedings Article 14 assures to everyone the same rules of evidence and modes of procedure; in other words, the same rule must exist for all in similar circumstances. It is also well settled that this principle does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstance in the same position. The State can by classification determine who should be regarded as a class of purposes of legislation and in relation to a law enacted on a particular subject, but the classification permissible must be based on some real and substantial distinction bearing a just and reasonable relation to the objects sought to be attained and cannot be made arbitrarily and without any substantial basis.

28. It was held that the Act applies to the same class of persons as the Income Tax Act, 1922 and yet the procedure prescribed by it was more onerous than that which

was provided for by the Income Tax ax, 1922. On this ground several provisions of the Act were considered as violative of Article 14 of the Constitution and thus void and unenforceable. The next case to be considered is (27) Shree Meenakshi Mills Ltd., Madurai Vs. Sri A.V. Visvanatha Sastri and Another, . In that case, it was held that the class of persons alleged to have been dealt with by Section 5(1) of the Taxation on Income (Investigation Commission) Act, 1947 was comprised of those unsocial elements in society who during recent years prior to the passing of the Act had made substantial profit and had evaded payment of tax on those profits and whose cases were referred to the Investigation Commission before 1948. Firstly, it was held that the words "substantial" had no fixed meaning and the classification was vague and uncertain, not saving the enactment from the mischief of Article 14. Even assuming that evasion of tax to a substantial amount could form basis of a classification the inclusion of only such of them whose cases had been referred before 1.9.1948 into a class for being dealt with by the drastic procedure, leaving other tax evaders to be dealt with under the ordinary law, was a clear discrimination. Further, even assuming that the provision of Section 5(1) can be saved from the mischief of Article 14, on the basis of valid classification that defence is no longer available after the introduction of Section 34(1-A) of the Income Tax Act, 1922 which Sub-section is intended to deal with the same class of persons dealt with by Section 5(1) of the 1947 Act. In (28) M. Ct. Muthiah and Others Vs. The Commissioner of Income Tax, Madras and Another, , it was held that after the amendment of Section 34(1) of the Income Tax Act even substantial evaders of income tax came within its provision and the provisions in Section 5(1) of Taxation on Income (Investigation Commission) Act, 1947 also applied to such persons. Thus, different persons, though falling under the same class or category of substantial evasion, would therefore be subject to different procedure, one in a summary and drastic manner and the other by the normal procedure which gave to Assessees valuable rights which were denied to those who were specially treated under the procedure prescribed by the 1947 Act, which was therefore, violative of Article 14 of the Constitution and void and unenforceable.

29. The next case to be considered in (29) S.M. Nawab Ariff Vs. Corporation of Calcutta and Others, . This case arose under the Calcutta Municipal Act, 1951. Under the said Act, defaulters in payment of rates and taxes could be proceeded against by way of suit but there was also a procedure for distraint u/s 237 which was more onerous and prejudicial to a defaulting rate payer than the ordinary procedure by way of a suit. There was no principle or policy laid down for the guidance of the exercise of discretion by the authorities in the matter of selection or classification as to the persons who could be proceeded against by way of suit. The provisions of Section 237 were held to be discriminatory and violative of Article 14 of the Constitution and so void under Article 13. The next case to be considered is (30) The State of West Bengal Vs. Anwar Ali Sarkar, . This was an appeal by the State of West Bengal from a judgment of a Full Bench of the High Court of Judicature at Calcutta

quashing the conviction of the Respondent by the Special Court established u/s 3 of the West Bengal Special Court Ordinance, 1949 which was replaced in March 1950 by the West Bengal Special Court Act, 1950 (West Bengal Act X of 1950). The Act was to provide for the speedier trial of certain offences and the preamble declared that it was expedient to provide for speedier trial of certain offences. Section 3 empowers the State Government by notification in the official gazette, to constitute special Courts and Section 4 provides for the appointment of special Judges to preside over such Courts. Section 5, whose Constitutionality was impugned, provides that a Special Court shall try such offences or class of offences or cases or classes of cases, as the State Government may be general or special order in writing direct. The special procedure in the impugned Act was more onerous. It was held that the impugned Act completely neglected the principle of classification followed by the Code of Criminal Procedure and proceeded to lay down a new procedure without making any attempt to particularize or classify the offences or cases to which it is to apply. The mere object of ''speedy trial'', is not a classification of offences or cases. It was held that Section 5(1) was therefore, violative of Article 14 and was ultra vires of the Constitution. In contrast to this case, we have the case of (31) Kedar Nath Bajoria Vs. The State of West Bengal, . In that case, what was challenged was Sections 4 and 9(1) of the West Bengal Criminal Law Amendment (Special Courts) Act (21 of 1949). Unlike the impugned Act in Anwar Ali''s case, (supra), this Act contained a schedule of offences which could be tried by the Special Courts. Patanjali Sastri, C.J., said as follows:

In considering this question, it is hardly necessary to invoke the accepted principle that ''if any state of facts can reasonably be conceived to sustain a classification the existence of the state of facts must be assumed'' (see per Fazl Ali, J. in (32) Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, , quoting from Constitutional Law by Wills). In the present case, it is well known that during the post-war period various organisations and establishments set up during the continuance of the war had to be wound up, and the distribution and control of essential supplies, compulsory procurement of food-grains, disposal of accumulated stores, adjustment of war accounts and liquidation of war-time industries had to be undertaken. These undertakings gave special opportunities to unscrupulous persons in public services placed in charge of such undertakings to enrich themselves by corrupt practices and anti-social acts thereby causing considerable loss to the Government. Viewed against this background, it will be seen that by and large the types of offences mentioned in the schedule to the Act are those that were common and widely prevalent, during this period, and it was evidently to prevent, or to place an effective check upon, the commission of such offences that the impugned legislation was considered necessary. It is manifestly the policy of the Act to impose, in addition to the penalties prescribed under the ordinary law, different punishment that would make the offender disgorge the ill-gotten gains procured by him by means of the offence, and where such gains were obtained at the expense of

Governments, to distribute the amount recovered among them in proportion to the loss caused to them by the offence. The legislative purpose is indicated clearly not only in the preamble to the Act but also in Section 9 which provides for special compensatory fines equal in value to the amount procured by the offender by means of the offence and as cases involving such offences were known to be numerous at the time, a speedier trial of such cases than was possible under the normal procedure was presumably considered necessary. Hence the system of Special Courts to deal with the special types of offences under a shortened and simplified procedure was devised, and it seems to us that the legislation in question is based on a perfectly intelligible principle or classification having a clear and reasonable relation to the object sought to be attained.

30. It was held that the main reasoning of the majority of the Judges in Anwar Ali''s case (supra), was hardly applicable to the impugned statute, based on a classification which in the context of the abnormal post-war economic and social condition was readily intelligible and obviously calculated to sub-serve the legislative purpose. It was held that it rather fell on the same side of the line as the Saurastra case, (33) Kathi Raning Rawat Vs. The State of Saurashtra, . In that case the Saurastra State Public Safety Measures (Third Amendment) Ordinance, 1949 was being considered. Section 11 authorised the State Government to direct offences or class of offences to be tried by the Special Courts. It was held that the impugned Ordinance having been passed to combat the increasing tempo of certain types of original crimes, the two-fold classification on the lines of type and territory adopted in the impugned Ordinance, read with the notification issued thereunder was reasonable and valid and was not void under Article 14. If the legislative policy was clear and definite and as an effective method of carrying out that policy a discretion was vested by the statute upon a body of administrators or officers make selective application of the law certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. In such cases, the power given to the executive body would impose a duty on it to classify the subject matter of legislation in accordance with the objective indicated in the statute. The discretion that is conferred on official agencies in such circumstances is not an unguided discretion; it has to be exercised in conformity with the policy. On the other hand if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be discriminatory irrespective of the way in which it is applied.

31. In (34) Kangshari Haldar and Another Vs. The State of West Bengal, the West Bengal Tribunals of Criminal Jurisdiction Act (14 of 1952) was considered. This Act was passed because the legislature though it expedient, in the interest of the security of the State, the maintenance of public peace and tranquility and the due safeguarding of industry and business to provide for the speedy trial of the offences specified in the schedule. The scheme of the Act was to appoint special Tribunals to try the scheduled offences which had taken place in disturbed are as defined in

Section 2(b). That was the effect of Section 4 of the Act. The proviso to Section 4(1) enabled the Tribunal, when it was trying any case, to try in its discretion any offence other than a scheduled offence with which the accused might under the Code of Criminal Procedure be charged at the same trial. The vires of Section 2(b) and the proviso to Section 4(1) were challenged. It was held that in considering the validity of the impugned statute on the ground that it violates Article 14, it would first be necessary to ascertain the policy underlying the statute and the object intended to be achieved by it. In this process, the preamble of the Act and its material provisions can and must be considered. Having thus ascertained the policy and the object of the Act, the Court should apply the dual test in examining its validity: Is the classification rational and based on an intelligible differentia ; and has the basis of differentiation any rational nexus with its avowed policy and object? If both these tests are satisfied, the statute must be held to be valid; and in such a case the consideration as to whether the same result could not have been better achieved by adopting a different classification would be foreign to the scope of the judicial enquiry. If either of the two tests is not satisfied, the statute must be struck down as violative of Article 14. In applying the said principles to the different sets of facts presented by different cases, emphasis may shift and the approach may not always be identical, but it is inevitable that the final decision about the vires of any impugned provision must depend upon the decision which the Court reaches, having regard to the facts and circumstances of each case, the general scheme of the impugned Act and the nature and effect of the provisions, the vires of which are under examination. If any set of facts can reasonably be conceived to sustain a classification the existence of that set of facts must be assumed. It was held that the impugned provision contained in Section 2(b) and proviso to Section 4(1) could not be considered to contravene Article 14, but if in issuing a notification authorised by Section 2(v) the State Government acted mala fide and exercised its power in a colourable way that could always be effectively challenged. [See (35) Lachmandas Kewalram Ahuja and Another Vs. The State of Bombay, and (36) Gopi Chand Vs. The Delhi Administration,]. The objects and reasons of a statute cannot ordinarily be referred to for the construction of or for ascertaining the meaning of any particular word used therein but can be looked at for ascertaining the background against which it was enacted - (37) The Commissioner of Income Tax, Madhya Pradesh and Bhopal Vs. Sodra Devi, . The objects and reasons of the said Act in so far as it is relevant have been set out above. That the preamble of an Act can be looked at for the purpose of testing the vires of Article 14 has been pointed out in (38) Sardar Inder Singh Vs. The State of Rajasthan, . In that case Section 15 of the Tenancy Laws - Rajasthan (Protection of Tenants) Ordinance (9 of 1949) was being challenged. Ayyar, J. said as follows:

A more substantial contention is the one based on Section 15, which authorises the Government to exempt any person or class of persons from the operation of the Act. It is argued that that section does not lay down the principles on which

exemption could be granted, and that the decision of the matter is left to the unfettered and uncanalised discretion of the Government, and in therefore repugnant to Article 14. It is true that the section does not itself indicate the grounds on which exemption could be granted, but the preamble to the ordinance sets out with sufficient clearness the policy of the Legislature; and as that governs Section 15 of the Ordinance, the decision of the Government thereunder cannot be said to be unguided. Vide (16) Harishankar Bagla and Another Vs. The State of Madhya Pradesh, .

32. In (39) Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, , so far as Article 14 is concerned, five principles have been laid down, been laid down, as follows:

(1) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the Court. In determining the validity or otherwise of such a statute the Court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply to a particular person or thing or only to a certain class of persons or things. Whether the Court finds that the classification satisfies the tests, the Court will uphold the validity of the law.

(II) A statute may direct its provisions against one individual person or things or to several individual persons or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of common knowledge. In such a case the Court will strike down the law as an instance of naked discrimination.

(III) A statute may not make any classification of the persons or things or the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute had laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of selection or classification. After such scrutiny the Court will strike down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly

situate and that, therefore, the discrimination is inherent in the statute itself. In such a case the Court will strike down both the law as well as the executive action taken under such law.

(IV) A statute may not make a classification of the persons or things for the purpose of applying its provisions and may leave it to the discretion of the Government to select and classify the persons or things to whom its provisions are to apply but may at the same time lay down a policy or principle for the guidance of the exercise of discretion by the Government in the matter of such selection or classification; the Court will uphold the law as constitutional.

(V) A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the persons or things for applying those provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection or classification does not proceed on or follow such policy or principle, in such a case, the executive action but not the statute should be condemned as unconstitutional.

33. Let us, now, apply these tests to the facts of the present case. Article 14 would always be attracted where there was class legislation. In such a case the question would arise as to whether the classification was a valid one. So far as the said Act is concerned, the classification relates to Government property and the occupants thereof, hence discrimination could conceivably be (a) between Government property and private property and (b) between the occupiers of Government property and occupiers of other property. If this classification is arbitrary and has no nexus to the objects of the Act and does not lay down an intelligible differentia, then it would fail to pass the test of Article 14 and would be void, as was the case in (30) The State of West Bengal Vs. Anwar Ali Sarkar, . (14) Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others, , (26) Suraj Mal Mohta Company v. A.V. Visvanatha Sastri, 1954 SC 545, (27) Shree Meenakshi Mills Ltd., Madurai Vs. Sri A.V. Visvanatha Sastri and Another, , (28) M. Ct. Muthiah and Others Vs. The Commissioner of Income Tax, Madras and Another, , and (29) S.M. Nawab Ariff Vs. Corporation of Calcutta and Others, .

34. But where there is any guide line in the Act, which may be gathered from the objects and reasons or the preamble or the body of the Act, by which the classification can be upheld, then the Court will not interfere: (32) Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, , (31) Kedar Nath Bajoria Vs. The State of West Bengal, , (32a) Budhan Choudhry and Others Vs. The State of Bihar, , and (33) Kathi Raning Rawat Vs. The State of Saurashtra, . The avowed object of the said Act is to avoid the long-drawn procedure by way of a suit in respect of eviction of unauthorized persons from Government property. Putting Government property on a special footing has been recognised as rational. The provisions in the preamble

and the body of the Act read in the background of the objects and reasons show that speedy eviction from Government lands was the object. Therefore, the provisions in the body of the Act, in so far as they carry out the object in making the classification can be upheld. Once it is accepted that Governmental land can be put on a separate footing and that the object of speedy eviction from such land is of public benefit, then, the classification of Government lands or the occupants thereof separately from the other lands of the occupants thereof must be upheld. Once the larger area was determined, the selective classification within that area by Government or its delegate is permissible. This is typified by the two cases Answar Ali Sarkar (supra), and Kedar Nath Bajoria (supra). In the former case certain provisions were struck down because the power of selection given to Government was arbitrary and unguided, whereas in the latter case the provisions were upheld because there was a schedule to the Act of offences which were governed by it and regard being had to the background in which the Act came into existence, it was held that the power of selection was not unguided. Similar is the case in Inder Singh v. State of Rajasthan, (supra). In the present case, it is true that the delegate of Government need not proceed under the Act in all cases but only where he thinks it necessary. But, this exercise of discretion is not unguided, because we have firstly the background of the enactment in the objects and reasons, the preamble, and we have the provisions in the body of the Act, for ensuring speed in achieving the object of regaining possession from unauthorized persons of Government property. It shows that the Estate Officer should exercise his discretion, not arbitrarily but according to the guidance laid down therein. Hence, it does not come within the mischief of the case of Dwarkadas (supra), where the power of selection was arbitrary, but comes within the principle laid down in the case of Harisankar Bagla (supra), where is was held that the object of the enactment guided the selection, as also the case of Pannalal Binjraj (supra), where it was held that the object of the enactment was a guide to the exercise of the selective power of the Commissioner of Income Tax, and if there was any abuse of the power, that could be corrected by the Court. In such cases, it is not the statute that should be struck down but the abuse thereof.

35. In my opinion, therefore, the objection that the provisions of the Act are discriminatory and violative of Article 14 fails. The result is that all the three objections taken against the vires of the Act fail. In this particular case, a special point is taken that the applicant is a company incorporated under the Indian Companies Act and as such cannot claim the benefit of fundamental rights under Article 19. A reference has been made to, (40) The State Trading Corporation of India Ltd. and Others Vs. The Commercial Tax Officer, Visakhapatnam and Others, and two other cases (41) The British India Steam Navigation Co. Ltd. Vs. Jasjit Singh, Addl. Collector of Customs, Calcutta and Others, and (42) Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others, . In view of my findings aforesaid, it is not necessary to consider this question. As decided by the Supreme Court, a

company is not a citizen and cannot claim the benefit of Article 19. But in this case, the objections include Article 14, which could be claimed by a non-citizen. In any event, this question need not be decided, in view of my decision on the points that have been put forward in this case.

36. For the reasons aforesaid the vires of the Act is upheld and the application fails and should be dismissed. The Rule is discharged. There will be no order as to costs. All interim orders are vacated. The operation of this order will remain stayed for three months in order to enable the Petitioner to prefer an appeal, as prayed for.

Arun k. Mukherjea, J.

37. I agree.

S.K. Mukherjea, J.

38. I agree.